STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0320

Timothy Langdon, et al.,
Appellants,

vs.

Holden Farms, Inc.,
Respondent.

Filed November 19, 2018
Affirmed
Rodenberg, Judge

Rice County District Court
File No. 66-CV-14-2123

Jack Y. Perry, Maren F. Grier, Briggs and Morgan, P.A., Minneapolis, Minnesota (for appellants)

Dustan J. Cross, Dean M. Zimmerli, Gislason & Hunter LLP, New Ulm, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Schellhas, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

Appellants Timothy and Jennifer Langdon appeal from the district court's decision after a court trial dismissing their breach-of-contact and breach-of-duty-of-good-faith-in-agricultural-contracts claims against respondent Holden Farms Inc., arguing that the district court erred as a matter of law. We affirm.

FACTS

Appellants own and operate a family farm. Respondent, a corporation owned by Kent Holden and his brother, is engaged in the production and sale of swine. Respondent contracts with and pays independent farmers to raise hogs owned by respondent. Companies such as respondent are sometimes referred to as "integrators," and the farmers are referred to as "growers."

The parties entered into a written "MN Wean to Finish Independent Contractor Agreement" (Agreement) on June 1, 2008, under which appellants would act as growers for respondent. All communication between the parties relating to the Agreement and before it was signed was through a third party, Interstate Mills. D.F., an Interstate Mills employee, acted as a go-between in an effort to sell more feed to the integrators.[1] In 2004, appellants purchased land in Blooming Prairie with the intention of constructing a

[1] There was some uncertain testimony about Mr. Langdon meeting Mr. Holden years earlier, but it is clear from the record that, in the immediate period leading up to the contract, there was no personal contact between Messrs. Holden and Langdon. There were a few phone calls between a Holden employee and Mr. Langdon, but those calls did not relate to this contract.

confinement barn and for the purpose of raising hogs at the site (BP site). Appellants originally planned on raising hogs at the BP site for another integrator, Squealers Pork, but, at some point, respondent replaced Squealers Pork as appellants' intended integrator. Mr. Langdon testified that he was not sure how this happened but that it was most likely through the efforts of D.F.

Under the parties' Agreement, and because appellants did not have an existing facility in which animals could be placed, appellants were required to timely construct a new wean-to-finish hog facility after obtaining all necessary permits and regulatory approvals. Section 1(C) of the Agreement provides that "the barn(s) to be utilized in connection with this Agreement consists of new construction with the approximate dimensions of 51 x 488 [feet]. *A precondition of Holden's obligations* under this Agreement is *timely completion* of construction of said barn(s) in accordance with the building characteristics as described in this Agreement." (Emphasis added.) Section 1(E) provides that a "precondition of Holden's obligations under this Agreement is inspection by Holden of the buildings and facility and determination by Holden that the same are satisfactory to it." Additionally, section 1(F) provides that a condition of the Agreement is grower's receipt of any and all necessary zoning and regulatory permits and approvals.

Respondent's obligations are set forth in section 3 of the Agreement, which provides that "Holden will deliver pigs to Grower for feeding and rearing at the facilities described above commencing no later than Fall 08." The period between when the Agreement was signed in June and the anticipated delivery in fall 2008 was to provide time for appellants

to obtain the necessary permits and construct the barn. Mr. Holden testified at trial that this process generally takes about four months.

Appellants never constructed the barn. There were further discussions between the parties after 2008, and appellants eventually sued respondent. Appellants claimed that they were only obliged to "timely" construct the barn, and that respondent wrongfully declined to follow through on its obligations under the Agreement. The district court found after trial that appellants were obligated to have all necessary permits and the barn built for population by respondent in the fall of 2008. After executing the Agreement, it was necessary for appellants to obtain a variance and conditional use permit (CUP) from Ripley Township to begin building the barn. The district court found that the terms and conditions of appellants' CUP were not complied with until, at the earliest, March 27, 2009.[2]

Appellants claim they were informed in the fall of 2008 that respondent then wanted to delay the project, but the district court found that "[t]here is no evidence that this in fact occurred." The district court found that "the evidence is clear that [respondent] . . . told [appellants] that the project would be put on hold in March of 2009." Appellants argued

[2] Appellants were issued a variance and CUP on October 23, 2008, but both contained a set of conditions to be met before construction could begin which included that (1) appellants enter into a written management agreement for the facility with Roger Toquam; and (2) acquire ownership or a lease of at least 96 acres of property for the site. The district court found that there was uncontroverted evidence that appellants did not have a complete agreement with Mr. Toquam, because they never agreed on the rate of pay. (Not mentioned by the district court was the additional problem that appellant executed the agreement as President of an LLC that appellant conceded did not exist.) Additionally, the district court found that the purported lease of additional acres was a sham lease. Appellants' attorney stated that the lease was intended to show compliance with the CUP provisions.

that the barn could not be built until respondent informed them when the pigs were coming, but the district court found as a fact that the Agreement identified when respondent was to deliver the pigs—fall 2008.

There was extensive testimony at trial concerning the communications between the parties between March 27, 2009, and commencement of the lawsuit in August 2013. The parties had some phone communication in 2010 in which respondent told Mr. Langdon that it did not need another grower for the year. Mr. Langdon does not recall his response. In 2011, Mr. Langdon went to respondent's office for a meeting during which he claims that respondent told him it was no longer using 3,000-head barns. He testified that, after he reminded respondent that they had a contract, respondent agreed to honor it. Mr. Langdon testified that he left the meeting thinking the project was "a go," but still did not build the barn.

It appears from the record that the parties met at the BP site in April 2011, where the parties agree that Mr. Holden told Mr. Langdon that the site should be cleaned up, including removal of a chicken barn. Mr. Holden testified that Mr. Langdon stated that he could not afford this cost and would find another integrator for which to grow. Mr. Holden testified that he understood this to be an abandonment of the project, to which Mr. Holden consented. Mr. Langdon testified that he does not recall anything he may have said in response to Mr. Holden's comment about cleaning up the property and still believed the Agreement was in place despite again not proceeding with barn construction.

The district court noted that much of the trial testimony was conflicting and found as a fact that communications after March 2009 were mere attempts to resurrect the

Agreement between the parties. It found that respondent did not breach the Agreement and, instead, found that there was a failure of a condition precedent—namely that appellants never constructed the barn into which respondent would have delivered pigs.

Appellants argued at trial that respondent improperly terminated the Agreement. The Agreement provides that it "shall be in effect upon execution and thereafter, unless sooner terminated by default, for a term of 12 years commencing Fall 08." Section 9 of the Agreement provides that "[a]n event of default shall be material breach of any term or condition of this Agreement." Section 9 also requires that, upon default, the nondefaulting party must provide 30 days' written notice to the defaulting party, and if any default is not cured within 30 days, then, in addition to the option of terminating the Agreement, the nondefaulting party shall have remedies that may exist at law or in equity including the remedy of specific performance.

Mr. Langdon claims that Mr. Holden called him on November 19, 2012, to inform him that respondent was not going forward with the project. Mr. Holden does not recall such a conversation. Respondent received a letter from appellants' attorney on December 19, 2012, asking respondent to follow up on the status of the Agreement and advise of respondent's intentions. The letter did not state that respondent had either breached the Agreement or was in default, nor did the letter mention any phone call from Mr. Holden one month earlier. Respondent's attorney replied on January 8, 2013, stating that several conditions had not been satisfied and that respondent considered the Agreement to have been abandoned. Mr. Langdon conceded at trial that appellants never

provided any 30-day notice of default. The district court found that the first document that could be construed as a notice of default was the complaint filed by the appellants.

After respondent was served with a summons and complaint on August 12, 2013, respondent's attorney sent a responsive email to appellants' counsel on August 30, 2013, stating that respondent would go through with the project if appellants still wished to do so and abide by the original terms. Appellants' attorney replied on September 6, 2013, stating that respondent's proposal to simply reinstate the Agreement with no financial reimbursement would not work. The district court stated, "[w]hile this finding is not necessary to the Court's decision, this Court does find that this was an offer to cure by [respondent] and was rejected by [appellants]."

The district court ultimately concluded after trial that appellants' building a swine barn ready for operation in 2008 was a condition precedent, and that their failure to build the barn was a "breach of contract." The district court found that the barn was not built because appellants did not have the proper permits in place until at least March 27, 2009, and that the barn not having been built had not been caused by anything respondent did or did not do. The district court found that respondent's obligation was to populate appellants' barn in the fall of 2008, but "[t]hey cannot populate a barn that doesn't exist." The Agreement provides that any modifications to it have to be in writing, and the district court found that no such writing existed. The district court recognized that, where an agreement provides that modifications must be in writing, case law permits oral modifications by clear and convincing evidence. But it found that appellants failed to prove an oral modification, even by a preponderance of the evidence.

The second count of appellants' complaint alleged misrepresentation and estoppel, with the first misrepresentation in the spring of 2009, and ensuing misrepresentations in 2010, 2011, and 2012. The district court determined that this claim fails because appellants' breach occurred before these purported misrepresentations. Appellants' third count alleged that respondent breached the statutory duty of good faith in agricultural contracts under Minn. Stat. §§ 17.90-.98. Appellants alleged, but the district court found that they failed to prove, that respondent's sole interest in entering into the Agreement and delaying for years was to prevent a competitor from raising hogs at the BP site. The district court found that the evidence produced by appellants in support of their claim that respondent acted in bad faith to be insufficient. The district court therefore dismissed appellants' complaint with prejudice and entered judgment in respondent's favor.

This appeal followed.

D E C I S I O N

In order to prevail on a breach-of-contract claim, a plaintiff must prove (1) formation of a contract, (2) performance by the plaintiff of any conditions precedent to the right to demand performance by the defendant, and (3) breach of contract by defendant. *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014) (citing *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011)). Appellants argue that, even if they were in default, respondent was required to provide them with notice and opportunity to cure in order to properly terminate the Agreement, because timely completion of the barn as required under section 1(C) was not a condition precedent to the Agreement. Contract interpretation is an issue of law reviewed de novo. *Linn v. BCBSM,*

Inc., 905 N.W.2d 497, 504 (Minn. 2018). Appellate courts review the district court's findings of fact for clear error. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008).

A condition precedent is "any fact except mere lapse of time which must exist or occur before a duty of immediate performance by the promisor can arise." *Carl Bolander & Sons Inc. v. United Stockyards Corp.*, 215 N.W.2d 473, 476 (Minn. 1974) (quotation omitted); *see also Nat'l City Bank of Minneapolis v. St. Paul Fire & Marine Ins. Co.*, 447 N.W.2d 171, 176 (Minn. 1989) (defining a condition precedent as "any fact or event, subsequent to the making of a contract, which must exist or occur before a duty of immediate performance arises under the contract"). "There are no particular code words needed to form an express condition." *Carl Bolander*, 215 N.W.2d at 476.

Section 1(C) of the Agreement reads, "A precondition of [respondent's] obligations under this Agreement is the timely completion of construction of said barn(s) in accordance with the building characteristics as described in this Agreement." Appellants identify three reasons supporting their contention that the district court erred by determining that this section contained a condition precedent: First, courts construe ambiguity against the drafter; second, respondent used the words "condition precedent" in a different section of the Agreement but not in section 1(C) and this difference in terminology must be regarded as intentional; and, third, the Agreement is to be construed consistent with respondent's prior interpretations of this contractual provision, and appellants cite to respondent's testimony that respondent considered the Agreement as operative long after fall 2008 despite no barn having been built.

Notwithstanding that section 1(C) of the Agreement does not use the specific words "condition precedent," appellants' argument is unavailing. The section is unambiguous. In *Carl Bolander*, the condition in question provided "*assuming that* no extreme depth pockets of unsuitable material exists that do not show up in your soil borings," and that contract language was determined to establish a condition precedent. 215 N.W.2d at 476 (emphasis added). The supreme court concluded that the contract language was "clear and unequivocal" in establishing a condition precedent to performance. *Id.* The section at issue here can sensibly be construed only as a condition precedent. Respondent could not deliver hogs unless and until appellants had constructed a barn into which they could be put. Therefore, the district court properly determined that section 1(C) of the Agreement established a condition precedent to performance.[3]

"When a contract contains a condition precedent, a party to the contract does not acquire any rights under the contract unless the condition occurs." *Nat'l Union Fire Ins. v. Schwing Am., Inc.*, 446 N.W.2d 410, 412 (Minn. App. 1989). It is a fundamental principle of general contract law that there can be no breach of contract if a condition precedent has not been satisfied:[4]

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[3] We note that the district court seems to have conflated the theories of contractual default and failure to fulfill a condition precedent when it stated that appellants breached the Agreement by failing to construct the barn. Nevertheless, the district court was ultimately correct in determining that constructing the barn was a condition precedent to any of respondent's obligations under the Agreement, as made clearer in its order denying appellants' posttrial motions.

[4] We are mindful that the Minnesota Supreme Court has recently acknowledged a limited exception to the general rule that unfulfilled conditions prevent enforcement of a contract where the unfulfilled condition is not a material condition of the contract and would result

> When a contractual duty is subject to a condition precedent, whether that condition is express, implied, or constructive, there is no duty of immediate performance and there can be no breach of that contractual duty by mere nonperformance, unless the condition precedent is neither performed nor excused. If such a condition precedent is neither performed nor excused within the time that is required, such failure now makes it impossible for a breach of contract to occur. Nonperformance of the primary contractual duty can now never operate as a breach of it; and no remedy for enforcement will ever be available. Therefore, the contractual duty must be regarded as discharged.

6 Arthur L. Corbin, *Corbin on Contracts* § 1252 at 2 (1962). Respondent cannot be determined to have breached the Agreement, because appellants have failed to demonstrate performance of the condition precedent that they build a barn by fall 2008. That condition was neither performed nor excused. Indeed, appellants provided no evidence that they had even begun construction of the barn before commencing their breach-of-contract suit against respondent.[5]

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in a disproportionate forfeiture. *See Capistrant v. Lifetouch Nat'l Sch. Studios, Inc.*, 916 N.W.2d 23, 26-28 (Minn. 2018) (stating that the court of appeals correctly looked to the Restatement (Second) of Contracts § 229 for guidance, which section provides: "To the extent that the non-occurrence of a condition would cause disproportionate forfeiture, a court may excuse the non-occurrence of that condition unless its occurrence was a material part of the agreed exchange"). Appellants have not argued that construction of the barn was not a material part of the Agreement or that there would be any forfeiture if barn construction is regarded as a condition precedent. Consequently, we adhere to the general rule that "unfulfilled conditions prevent enforcement of a contract." *Crossroads Church of Prior Lake MN v. County of Dakota*, 800 N.W.2d 608, 615 (Minn. 2011).

[5] Appellants argue in their reply brief that they started construction of the barn. However, appellants' attorney agreed to strike this assertion from the reply brief because it includes information not contained within the trial court record. The record supports the district court's finding that "the barn was never built."

Appellants argue that respondent breached the Agreement by anticipatorily repudiating the Agreement in January 2013. But there was no binding agreement in place between the parties on that date.[6] Appellants also argue that the parties mutually modified the Agreement's terms regarding the timing of barn construction and hog delivery. The Agreement expressly provided that no modifications could be made except by subsequent written documents signed by both parties. The district court found that "[i]t is clear there were no such written documents in this case," and appellants have not argued otherwise. The record supports this finding. "This court respects written contracts and subjects allegations of an inconsistent oral contract to a rigorous examination." *Bolander v. Bolander*, 703 N.W.2d 529, 541-42 (Minn. App. 2005). When a party asserts that there has been an enforceable oral modification of the terms of a written contract, that party has the burden of providing the modification by clear and convincing evidence. *Id.* at 542. The district court found that appellants "fail in even showing an oral modification by the preponderance of the evidence, let alone clear and convincing evidence." The record supports this finding as well.

Appellants claim they were informed in the fall of 2008 that respondent wanted to then delay the project, but the district court found "[t]here is no evidence that this in fact

[6] Appellants argued in their principal brief that the letter they received from respondent's attorney in January 2013 stated that respondent "would no longer proceed under the Agreement." Counsel acknowledged at oral arguments that the letter does not contain this statement.

occurred."[7] The district court found that Mr. Langdon's testimony was not persuasive because he was able to recall specifically what others had told him in phone calls years earlier but invariably testified that he does not remember what his response was to those statements. The record supports the district court's finding that appellants failed to prove an oral modification of the Agreement by clear and convincing evidence and that the communications after fall 2008 were, at most, attempts to resurrect the 2008 agreement.[8] Respondent could not have repudiated an agreement that was no longer operative. The record supports the district court's determination that appellants' breach-of-contract claim must fail because appellants failed to satisfy a condition precedent that was within their control.

Appellants argue that, if we were to conclude that respondent improperly terminated the Agreement, then remand should follow for the district court to determine whether respondent breached the statutorily implied promise of good faith in agricultural contracts pursuant to Minn. Stat. § 17.94 (2016). The record supports the district court's determination that appellants failed to demonstrate that respondent did not act in good faith.

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[7] Appellants argued in their posttrial motion that appellants and D.F. jointly decided in the fall of 2008 that the contract needed to be delayed, but D.F. was never employed by respondent. Appellants' conversations with D.F. are irrelevant, and the district court properly so found.

[8] Appellants argued in their brief on appeal that respondent waived appellants' failure to construct the barn by fall 2008. There is some uncertainty as to whether this issue was properly raised to the district court, but the argument is at least within the scope of appellants' argument that respondent modified or waived the timing of the Agreement. As noted, the district court properly found that there was no modification of the Agreement and nothing in the record suggests that respondent waived appellants' obligation to construct a barn to house the hogs as a condition precedent to its obligation to deliver pigs.

As the district court properly found, it was appellants' failure to construct the barn that frustrated the Agreement, and appellants' failure to construct the barn had nothing to do with anything respondent did or failed to do. Because appellants' argument is premised on reversing the district court's finding that appellants failed to satisfy a condition precedent, and because the record supports the district court's findings, we decline to remand for a determination of whether respondent breached the statutorily implied promise of good faith in agricultural contracts.

Lastly, appellants do not advance any arguments on appeal relating to the dismissed misrepresentation and estoppel claims. The district court correctly dismissed those claims because the alleged misrepresentations occurred after appellants failed to satisfy a condition precedent to respondent's obligations under the Agreement.

Affirmed.